

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

April 5, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of February 26, 2001 and follow-up information provided on March 22, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request a Private Letter Ruling (hereafter "PLR") pursuant to Ill. Admin. Code 1200.110, as adopted at 17 Ill. Reg. 7054, effective May 3, 1993. Our client COMPANY (hereafter "Company"), requests a ruling on qualified, repair materials, which will be incorporated into real estate located in an enterprise zone, by remodeling, rehabilitation, or new construction.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing REPRESENTATIVE (hereafter "Representative") to represent Company before the Illinois Department of Revenue (hereafter "Department").
2. This PLR is not requested with regard to alternative proposed transactions or hypothetical situations. This PLR is request to determine the Retailers' Occupation Tax consequences of the actual business practices of Company.
3. This PLR does not relate to issues involved in current returns by Company or related to an audit by Company.
4. The Department has not previously ruled on this matter for Company.

5. Company requests that certain information be deleted from this PLR prior to public dissemination. Company requests that its name, address, location of its facility and the name of Representative be deleted.
6. Company does not know of any contrary authority.

Statement of Facts

Company owns a coal-fired electric generating power plant, (hereafter "plant") located within the County Enterprise Zone, an Illinois enterprise zone (hereafter, "the enterprise zone").

Company has contracted with VENDOR (hereafter "Vendor") for the purchase of the materials to be used in the rehabilitation and repair of the facility. Vendor is located within the enterprise zone.

The following is a list of significant materials, broken down by major systems, for which Company has contracted with Vendor:

FUEL HANDLING SYSTEMS:

Conveyors, trippers, bunkers, feeders, tubes, bolted motors used to transport coal, bolted motors used to move the conveyors, skids, nozzels, headers, ducts, dust suppression systems, and electrical wiring.

CRUSHING AND PULVERIZING SYSTEMS:

Coal pulverizers, crusher houses, tubes, bolted motors used to transport coal, bolted motors used to crush coal, and electrical wiring.

BOILER AND FURNACE SYSTEMS:

Soot blowers, burners, tubes, bolted motors that pump air, bolted motors that pump water, fans, piping for air, piping for water, piping for steam, piping for natural gas, air compressors, air dryers, air preheaters, air reheaters, air superheaters, stacks, electrical wiring, and steam drums.

ASH REMOVAL SYSTEMS:

Tubes, bolted motors that pump water, bolted motors that transport ash, fans, piping for ash, ash handling systems, wet ash removal systems, flyash transportation systems, ash transfer facilities, electrical wiring, and precipitators.

GENERATION AND TRANSMISSION:

Turbines, transformers, generators, coils, generation control system, and electrical wiring.

MISCELLANEOUS:

Sewage and water treatment plants, fire protection systems, and distributed control system.

The foundation of the plant delves approximately four stories underground and extends approximately five stories above ground. The entire plant, from its lowest point underground to its highest point on the stacks, consists of components and systems

that are bolted, fused, or otherwise interconnected so as to be completely immobile and permanently affixed to one another. None of these systems can be removed without expending enormous expense and without causing considerable damage to the plant as a whole.

Ruling Requested

The issue in the PLR is whether the plant, its components and systems, qualify as building materials incorporated into real estate located in an enterprise zone and whether repair and replacement parts can be purchased exempt by reason of the enterprise zone building materials exemption under 86 Ill.Admin.Code 130.1951(1) and 35 ILCS 120/5k.

Analysis and Authority

The Illinois Retailers' Occupation Tax Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. In accordance with the Act, the tax is measured by a seller's gross receipts. 35 ILCS 120/2-10. A retailer whose place of business is located within a county or municipality which has established an enterprise zone, and who makes sales of building materials to be incorporated into real estate in that enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales in the calculation of taxable gross receipts. 35 ILCS 120/k.

Under the applicable regulation, "in order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate." 86 Ill.Admin.Code 130.1951(a)(7).

The regulations provides examples of qualifying building materials:

- Common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(A).
- Plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(B).
- Heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(C).
- Electrical systems and components thereof such as wiring, outlets and light fixtures which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(D).
- Built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(G).

The issue in this PLR is whether the replacement and repair parts for the plant's components and systems qualify as building materials incorporated into real estate.

First, under the regulation, the concrete and steel for the foundations and housing, as well as the anchor bolts and grounding gird, should qualify as building materials

incorporated into real estate. 86 Ill.Admin.Code 130.1951(a)(7)(A). In addition, the accessory base and stacks should qualify as building materials incorporated into real estate. Id.

Second, pump motors; tubes and piping for the water, steam, and natural gas; as well as sewage and water treatment plants should qualify as building materials incorporated into real estate as plumbing systems and components under 86 Ill.Admin.Code 130.1951(a)(7)(B).

Third, to generate electricity, the plant needs to generate heat to create steam. Therefore, since soot blowers; coal pulverizers; burners; crusher houses; conveyors; trippers; bunkers; feeders; tubes; various motors that pump the coal, move the conveyors, and crush coal; fans; piping for the coal, air, water, steam, and natural gas; ash handling systems; air compressors, dryers, preheaters, reheaters, superheaters; skids; nozzels; coils; headers; tubes; ducts; sewage and water treatment plants; fire protection systems; wet ash removal systems; dust suppression systems; distributed control system; generation control system; precipitators; stacks; electrical wiring; and steam drums are used to generate heat, they should qualify as heating systems under 86 Ill.Admin.Code 130.1951(a)(7)(C).

Fourth, under the regulation, electrical systems and equipment, including transformers, aboveground and underground electrical conduit, cabling, wiring, and the inlet fogging system should qualify as building materials incorporated into real estate. 86 Ill.Admin.Code 130.1951(a)(7)(D).

Fifth, under the regulation, the turbines and generators should qualify as building materials. The turbines and generators are physically incorporated into real estate because they are a part of a component of a building's electrical system. The turbines and generators are anchored with bolts to the housing and along with the related materials comprise part of the complex's power electric system. From this perspective, the turbines and generators are like free-standing appliances, such as stoves, that are a component of a building's electrical system. Accordingly, the turbines and generators should qualify as non-taxable building materials incorporated into real estate. 86 Ill.Admin.Code 130.1951(a)(7)(G).

Sixth, ash transfer facilities and flyash transportation systems are used to recapture coal ash after the burning process is completed. They are physically integrated and affixed to the plant and cannot be removed without an expenditure of great expense and without causing considerable damage to the plant as a whole. These facilities and systems should qualify as building materials incorporated into real estate under 86 Ill.Admin.Code 130.1951.

In a recent Private Letter Ruling for another taxpayer with facts substantially similar to Company's (described above), the Department ruled that the taxpayer's natural gas fired turbines, generators, and related materials qualify as building materials. See ST 00-0013-PLR, July 7, 2000; and ST-00-0025-PLR, October 19, 2000.

We respectfully request that the Department issue a ruling stating the plant, it's components and systems, are not intended to move from place to place, that they should be considered physically incorporated into real estate in an enterprise zone, and that all repair and replacement parts can be purchased exempt by reason of the

enterprise zone building materials exemption under 86 Ill.Admin.Code 130.1951(1) and 35 ILCS 120/5k.

Thank you in advance for your prompt attention to this matter. Please feel free to call if you have any questions or need any additional information.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. You have asked whether the items set forth in your letter are building materials as defined in the regulations. Section 130.1951(a) states, in part, as follows:

- 7) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.

The following rulings are based upon the information contained in your letter and the supplemental information you sent on March 22, 2001. Building and equipment foundations consisting of concrete and rebar qualify as building materials, as do anchor bolts, electrical conduit and piping and other fixtures embedded in the foundations. The accessory base and stacks that are permanently attached to realty by being bolted, fused or otherwise interconnected so as to be completely immobile and permanently affixed to one another qualify as building materials. The water pumps, pump motors, tubing and piping that compose the sewage and water treatment plants qualify as building materials. It is our understanding that the water pumps are bolted to various sections of the foundation housing and are thus permanently affixed to real property. Further, the tubes and pipes that carry the water are affixed to real property by being embedded into the foundation or attached to the foundation through the use of bolts and anchors.

It is our understanding from your supplemental information that the fire protection system is the integrated system for the plant and that it is composed of control panels, wires, water sprinklers and pipes. The wires are embedded into the foundations and walls of the housing and plant and are therefore permanently affixed to real property. The water sprinklers and pipes are anchored into the foundations and walls of the housing and plant and are therefore permanently affixed to real property. Since the wires, water sprinklers and pipes are permanently affixed to real property, they qualify as building materials.

The items that compose the coal pulverizer and dust injection system are conveyers and motors; coal pulverizers; crusher houses; soot blowers; and burners. You stated in your supplemental information that the conveyors are bolted to various sections of the foundation and are permanently affixed to real property. The motors move the conveyors and are bolted to the foundation and permanently affixed to real property. The coal pulverizer is attached to the crusher house foundation and integrated and attached to the boiler unit, which is bolted and affixed to the steel framing of the facility and therefore is permanently affixed to real property. Both the soot blowers and the burners are bolted to the foundation and are permanently affixed to real property. Since the conveyers and motors, coal pulverizers, crusher houses, soot blowers, and burners are permanently affixed to real property, they qualify as building materials.

Air compressors, dryers, heaters (preheaters, re-heaters, and super-heaters), nozzles, coils, headers, ducts, and steam drums compose the heating system. All of these items qualify as building

materials because they are bolted or welded to the steel framing of the facility, thus permanently affixing them to real property.

The electrical system is composed of the distributed control system and the generation control system, both of which are substantially comprised of various control boxes, switching controls, wires, circuits and conduits. The control boxes, switching controls, wires, circuits and conduits that are bolted to the walls and run through the conduit throughout the entire plant qualify as building materials. The transformers and inlet fogging system that are permanently attached to realty by being bolted, fused or otherwise interconnected so as to be completely immobile and permanently affixed to one another qualify as building materials.

The turbines and generators that are anchored with bolts to the housing and that along with related materials comprise part of the complex's power electric system qualify as building materials.

The ash handling systems include piping, storage vats, motors, and air cleaners (also known as precipitators) which are used to collect coal ash after the coal has been burned. The piping, storage vats, motors, and air cleaners that are bolted or welded to various steel framing or foundations qualify as building materials.

The enterprise zone exemption includes component parts of the building materials that are permanently affixed to realty. If the building materials or their component parts need to be repaired or replaced, those repair and replacement parts that are permanently affixed to real estate qualify for the exemption.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.